

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SYNOPSIS REPORT

Decisions Issued in March, 2021

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to wvgb@wv.gov.

NOTICE: These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

TOPICAL INDEX
HIGHER EDUCATION EMPLOYEES

<u>KEYWORDS:</u>	Employee; Employer; Jurisdiction
<u>CASE STYLE:</u>	<u>Gulledge v. West Virginia University</u> DOCKET NO. 2021-2209-WVU (3/23/2021)
<u>PRIMARY ISSUES:</u>	Whether the Grievance Board has jurisdiction in this matter.
<u>SUMMARY:</u>	Grievant filed a grievance form against his employer, West Virginia University alleging that his wife, an employee of the Department of Health and Human Resources, was being harassed and sought as relief for the alleged harasser to be disciplined. Grievant's claim is not a grievance as defined by the West Virginia Public Employees Grievance Procedure. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance must be dismissed.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

<u>KEYWORDS:</u>	Extracurricular Contract; Termination; Insubordination
<u>CASE STYLE:</u>	<u>Glover v. Hampshire County Board of Education</u> DOCKET NO. 2019-0262-HamED (3/25/2021)
<u>PRIMARY ISSUES:</u>	Whether Respondent had good cause to terminate Grievant's contract.
<u>SUMMARY:</u>	Grievant was employed by Respondent as the Boys' Head Basketball Coach at Hampshire High School. Grievant's extracurricular contract for this assignment was terminated by the Respondent due to the failure of Grievant, on numerous times, to abide by the directives of her supervisor. Respondent proved this charge by a preponderance of the evidence. The record supports a finding that Grievant was provided written notice of the charges, an explanation of the evidence, and an opportunity to respond prior to Respondent's decision to terminate Grievant her contract. Grievant makes numerous allegations regarding Respondent's unfair, wrongful or unlawful actions and cites a list of laws and policies that were allegedly violated. No evidence was presented by Grievant that supports any of these claims. This grievance is denied.

<u>KEYWORDS:</u>	Termination; Probationary Employee; Insubordination; Employee Code of Conduct; Willful Neglect of Duty
<u>CASE STYLE:</u>	<u>McCauley v. Berkeley County Board of Education</u> DOCKET NO. 2020-0728-BerED (3/16/2021)
<u>PRIMARY ISSUES:</u>	Whether Respondent had good cause to terminate Grievant.
<u>SUMMARY:</u>	Grievant was employed as a probationary teacher by the Berkeley County Board of Education. Grievant was dismissed from his contract of employment for insubordination and willful neglect of duty following an incident involving a student that resulted in a finding of neglect by the Department of Health and Human Resources. Respondent proved these charges by a preponderance of the evidence. In addition, Respondent was acting within its discretion to dismiss a probationary employee pursuant to the applicable law. The record did not support a finding that Grievant was entitled to a plan of improvement or a corrective action plan.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Selection; Qualifications; Arbitrary and Capricious
<u>CASE STYLE:</u>	<u>Persinger v. Department of Health and Human Resources/Bureau for Child Support Enforcement</u> DOCKET NO. 2019-1218-DHHR (3/17/2021)
<u>PRIMARY ISSUES:</u>	Whether Respondent's selection decision was arbitrary and capricious.
<u>SUMMARY:</u>	Grievant argues that Respondent improperly hired another employee for a paralegal position when Grievant was the most qualified applicant. She specifically argued that Respondent placed too much emphasis on the interview, did not give her enough credit for prior experience, and the decision was arbitrary and capricious. Respondent demonstrated that it followed a structured interview procedure encouraged in its policy and considered factors which were appropriately related to the vacant position and the qualifications of the candidates. Grievant did not prove that the selection decision was arbitrary and capricious.

<u>KEYWORDS:</u>	Job Assignments; Additional Duties; Classification
<u>CASE STYLE:</u>	<u>Prince v. Division of Corrections and Rehabilitation/Bureau of Prisons and Jails</u> DOCKET NO. 2020-0552-MAPS (3/2/2021)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved he is entitled to the removal of the additional duties Respondent has assigned.
<u>SUMMARY:</u>	Grievant is employed by Respondent as a Building Maintenance Supervisor 1. Grievant protests Respondent's mandatory assignment of additional duties not within Grievant's classification. Grievant has failed to prove he is entitled to the removal of the additional duties Respondent has assigned. Respondent is permitted to assign some duties that are not within an employee's classification. Grievant is not entitled to the removal of the duties as the duties are not his predominant duties and he is paid at a higher rate than the classification of the additional duties. Accordingly, the grievance is denied.

KEYWORDS: Termination; Probationary Employee; Misconduct; Class Photo; Nazi Salute; Discrimination; Arbitrary and Capricious

CASE STYLE: Steach, et al. v. Division of Corrections and Rehabilitation/Bureau of Juvenile Services AND Bureau of Prisons and Jails
DOCKET NO. 2020-1487-CONS (3/8/2021)

PRIMARY ISSUES: Whether Respondent had good cause to terminate Grievants' probationary employment.

SUMMARY: Grievants were employed on a probationary basis as Correctional Officers and were trained at the Corrections Academy. After discovering a photo of the graduating Academy Class 18 cadets performing a Nazi salute, Respondent ordered an investigation. When the investigation substantiated that Grievants participated in and failed to report the salute, Respondent dismissed Grievants for misconduct. Grievants assert they were following orders to engage in conduct that was in poor taste but not unlawful, did so under the peril of dismissal if disobeyed, did not know they had the option to disobey, performed a Roman rather than a Nazi salute, and in fact reported the incident. Respondent proved that Grievants knowingly performed a Nazi salute and violated known policy in failing to report conduct they recognized as unusual, thus justifying their dismissal. Accordingly, this grievance is DENIED.

KEYWORDS: Discrimination; Classifications; Job Duties; Pay Raise

CASE STYLE: Wilson v. Division of Highways
DOCKET NO. 2019-0901-DOT (3/1/2021)

PRIMARY ISSUES: Whether Grievant was subjected to discrimination.

SUMMARY: Grievant has been employed by the Division of Highways since September 10, 1990 as a Maintenance Assistant. In 2017, some classifications of Maintenance Assistants received a pay raise. Grievant did not. There are different classifications that have the working title Maintenance Assistant. Some are Highway Administrators, some are Technicians, such as Grievant, and others are Engineers. Despite Respondent's efforts, and while being paid within his paygrade, Grievant did not receive a pay raise until December 2, 2020. The record is somewhat unclear as to what legal basis Grievant is asserting in relation to seeking a back pay award. In any event, Grievant's raise was within the discretion of the Division of Highways and the record does not support a finding that Grievant is entitled to any back pay for any delay in receiving this raise.

KEYWORDS: Timeliness, Unequivocally Notified, Fifteen-Day Statutory Deadline

CASE STYLE: Carson v. Division of Administrative Services/ AND Division of Personnel

DOCKET NO. 2020-1058-MAPS (3/16/2021)

PRIMARY ISSUES: Whether Grievant filed the grievance within the mandatory statutory time-period.

SUMMARY: Respondent DOP seeks dismissal of this grievance arguing that it was not filed within fifteen days of the action giving rise to it. DOP argues that a final determination was made that Grievant did not meet the minimum qualifications for the ASM 1 classification on December 19, 2019, but the grievance was not filed until March 17, 2020, months after the final notification. Grievant argues that the DAS Director and the DOP Director discussed her situation over the period of January 17, 2020 through March 4, 2020. She asserts that she was not unequivocally notified of DOP's decision until March 4, 2020, rendering her grievance timely.

DOP unequivocally notified Grievant regarding her qualifications vis-à-vis the ASM 1 classification on December 19, 2019. That was the date when the filing time began to run. Grievant and her supervisor could continue to discuss the matter thereafter but that does not toll the filing deadline.

KEYWORDS: Termination; Probationary Employee; Harassment; Discrimination; Arbitrary or Capricious

CASE STYLE: Falvo v. Division of Highways

DOCKET NO. 2020-1111-DOT (3/16/2021)

PRIMARY ISSUES: Whether Respondent's decision to terminate Grievant's employment was arbitrary and capricious.

SUMMARY: Grievant was employed by Respondent as a probationary Transportation Worker 1, Equipment Operator. Grievant and a coworker both alleged harassment against the other. Grievant was terminated from his probationary employment for the alleged misconduct of making a sexual gesture towards the coworker. Respondent did not properly investigate or discipline the coworker for his alleged harassment of Grievant. Respondent's decision to terminate Grievant's employment was arbitrary and capricious because Respondent failed to prove that the gesture was sexual in nature and the decision constituted discrimination and/or favoritism due to the failure properly investigate or discipline the alleged harassing coworker. The Grievance Board does not have the authority to award attorney's fees. Accordingly, the grievance is granted, in part, and denied, in part.